



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2004

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-9944

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 213324.

The Houston Police Department (the "department") received a request for twenty eight offense reports. You state that the department will release some information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) makes confidential juvenile law enforcement records that involve conduct that occurred after September 1, 1997. Section 58.007(c) only applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party, rather than as a juvenile suspect or offender. You claim that section 58.007 is applicable to Exhibits 2 and 23. We have reviewed the submitted information and find that Exhibit 23 does not relate to juvenile conduct. Therefore, Exhibit 23 may not be withheld under section 552.101 in conjunction with section 58.007. Exhibit 2 does involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, Exhibit 2 is confidential pursuant to section 58.007(c) of the Family Code. You must withhold Exhibit 2 from disclosure under section 552.101 of the Government Code.<sup>1</sup>

You claim that Exhibit 15 is excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

---

<sup>1</sup>As our ruling is dispositive regarding Exhibit 2, we need not consider your remaining claimed exceptions for this report.

Fam. Code § 261.201(a). In this instance, you do not demonstrate, nor does the information reflect, that Exhibit 15 consists of any “files, reports, records, communications, and working papers used or developed in an investigation under this chapter” for purposes of section 261.201. Thus, you may not withhold the submitted information under section 552.101 in conjunction with section 261.201.

Section 552.101 also encompasses the doctrine of common-law privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Exhibit 26 contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. In most cases, the department would be allowed to withhold only this information. In this instance, however, the requestor knows the identity of the individual involved as well as the information in question. Therefore, withholding only certain details of the incident from the requestor would not preserve the named individual’s common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates we determine that the department must withhold Exhibit 26 in its entirety under section 552.101.<sup>2</sup>

Next, we consider the applicability of section 552.108 to the remaining submitted information. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information in Exhibits 3, 7 through 11, 13 through 16, 18, 20, 23 and 24 relate to cases that are “inactive pending additional leads.” You state that the statute of limitations has not run in any of the cases and that the investigations “may be reactivated once additional leads are developed.” Based upon these representations, we conclude that the release of Exhibits 3, 7 through 11, 13 through 16, 18, 20, 23 and 24 would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are

---

<sup>2</sup>As our ruling is dispositive regarding Exhibit 26, we need not consider your remaining claimed exceptions for this report.

present in active cases). Therefore, we agree that section 552.108(a)(1) is applicable to these incident reports.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that Exhibits 4, 5, 6, 12, 17, 19, 21, 25 and 26 pertain to cases that concluded in final results other than convictions or deferred adjudications. Therefore, we agree that section 552.108(a)(2) is applicable to these incident reports.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*; Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although sections 552.108(a)(1) and (a)(2) authorize you to withhold Exhibits 3 through 21 and 23 through 26 from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Finally, regarding Exhibit 22, we note that you have claimed that this information is excepted from disclosure under both sections 552.108(a)(1) and 552.108(a)(2). Generally speaking, section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Thus, the department has failed to demonstrate that release of Exhibit 22 would interfere with the detection, investigation, or prosecution of crime or that this information pertains to a case that concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Therefore, the department may not withhold Exhibit 22 under section 552.108. As you make no other arguments against disclosure for Exhibit 22, it must be released to the requestor. As our ruling is dispositive for all remaining information, we need not consider your remaining claimed exceptions against disclosure.

In summary, the department must withhold Exhibit 2 under section 552.101 in conjunction with section 58.007 of the Family Code. The department must withhold Exhibit 26 under section 552.101 in conjunction with common-law privacy. With the exception of the basic information, which must be released, the department may withhold Exhibits 3 through 21 and 23 through 26 under section 552.108. Exhibit 22 must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

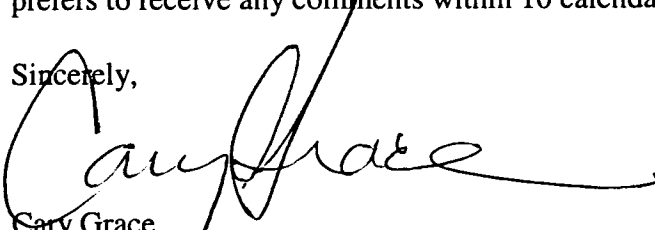
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", written over a horizontal line.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 213324

Enc. Submitted documents

c: Ms. Kathy Kelley  
Edmondson & Associates, LLP  
2010 North Loop West, Suite 270  
Houston, Texas 77018  
(w/o enclosures)